IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.453 OF 2004

Smt.Radhika w/o Mukesh Wadhwa Petitioner

versus

State of Maharashtra & others Respondents

Mr.S.P.Kanuga with Hitesh P. Vyas for petitioner

Ms.Kashmira S. Bharucha i/by Mr.Sandeep Velkar for respondents 2 to 8.

Mr.S.S.Tatkare, APP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 2nd December 2005

PC :

1. Rule. Rule made returnable forthwith with consent of parties.

2. By this writ petition under Article 227 of the Constitution of India, the order dated 13th June 2003 passed by the Additional Sessions Court, Kalyan, District Thane in Criminal Revision Application No.33 of 2002 is challenged by the petitioner-original complainant.

3. The petitioner-original complainant has

married the second respondent. The third respondent is her father-in-law. The fourth respondent before me is the mother-in-law. The respondent no.5 is the grand father-in-law whereas respondents 6 and 7 are the sister-in-laws of the petitioner.

4. The petitioner had filed a complaint in the Court of JMFC, Ulhasnagar being Criminal Case No.3204 of 2001 complaining of offences punishable under sections 406 read with 34 of IPC against the aforesaid respondents.

5. The complaint sets out that after her marriage with second respondent on 1st January 1999 and even thereafter the petitioner was harassed, mentally and physically assaulted and tortured as well as demands were made for dowry. Several articles in the form of cash as well were handed over and list as well as details thereof are set out in the complaint. It is contended that the property which was handed in after the marriage with second respondent, constituted "Stri Dhan" of the petitioner, who is a married Hindu Lady. She has pointed out in details as to how the accused, except the grand father-in-law, with whom she was residing for a considerable

length of time, harassed her with the demands of dowry and after articles were brought in by her from her parents house, the same were taken away. The Magistrate upon being satisfied with the averments of the complaint and the statements recorded at the stage of verification, was pleased to issue process against all seven accused.

6. The seven accused thereupon challenged the said order in revision before the Sessions Judge and it is on the said application that the impugned order was passed.

7. Shri Kanuga - learned counsel for the petitioner submits that the order passed by the learned Sessions Judge, is ex-facie erroneous and perverse to say the least. He states that the learned Sessions Judge ought to have been aware of the limits of revisional jurisdiction. Moreso, when all that was under scrutiny was an order issuing process. At that stage, the learned Judge was not presiding over as a Court of Appeal. It was not necessary for him to minutely scrutinise the averments in the complaint and the statements of witnesses as if he was holding a trial. The learned Sessions

Judge clearly exceeded his jurisdiction and the impugned order, therefore, deserves to be quashed and set aside.

8. The learned counsel appearing for the respondents 2 to 7, on the other hand, states that the order passed by the Sessions Judge, does not call for interference in extraordinary and supervisory jurisdiction under Article 227 of the Constitution of India. This Court cannot go into the facts and come to a different conclusion in exercise of it's jurisdiction merely because in the opinion of this Court process ought to have been issued against all the accused.

9. In my view, the learned Sessions Judge has clearly exceeded his jurisdiction. With the assistance of Shri Kanuga and Ms.Bharucha, I have perused the averments in the complaint and the impugned order. At the stage at which the matter was, the learned Sessions Judge was not called upon to go into as to whether the material that was placed before the Magistrate when he issued the process, was sufficient to convict the accused. It is well settled that all that was necessary was satisfaction that prima facie the offences, as alleged in the complaint, are

disclosed and therefore, it is necessary to proceed further. At the stage where the matter was, it was not expected that statements of persons verifying the contents of the complaint should be scrutinised minutely. It is not necessary that role ascribed by the complainant to each of the accused should be gone into. The evidentiary value of the statements recorded is something which is not at all required to be pronounced upon. The learned Judge was in clear error in holding that there was no material before the Trial Court when it proceeded to issue process. In the order the learned Judge has observed thus :-

> "... ... At the time of issuing process there was no material before the Trial Court except the complaint and statement on oath of the complainant and reading this the trial court could be justified only in issuing process against the husband of the complainant. It is pertinent to note that no specific role of so far as the alleged offence is concerned has been assigned to any of the accused. It is also not made clear as to what articles has been entrusted to what accused. The order of the trial court assuming the entrustment of the articles to her husband with whom the complainant was residing would at the most be upheld."

10. The learned Judge was, therefore, not justified in holding that the order passed by the

Trial Court issuing process against other accused i.e. excluding husband, cannot be upheld. The conclusion that there is no specific allegations against other accused nor any evidence corroborating statements on oath by the complainant is available, is wholly erroneous. This finding is clearly vitiated by an error apparent because the Sessions Judge has not gone into the complaint at all. When the complaint itself narrates not only entrustment of the articles to the in-laws but the demands preceding thereto and also as to how there is a refusal to hand over the same, then the offence alleged u/s 406 is clearly spelt out. The ingredients of Section 406 contemplate pleading firstly that the property has been entrusted and that there is dishonest misappropriation or conversion or dishonest disposal, and these are clearly set out. If any reference is needed, then the averments from paragraphs 8 to 12 of the complaint are sufficient. In these circumstances, the order passed by learned Additional Sessions Judge cannot be sustained. It is set aside to the extent it refuses to issue process against the in-laws as well as sister-in-laws of the petitioner-complainant. However, as far as grand father-in-law of the

petitioner is concerned, I find that the materials produced at the stage of issuance of process, were not enough to disclose commission of offence as alleged therein. Same is the case as far as uncle of the husband of the petitioner. As far as he is concerned, the necessary averments are lacking. Shri Kanuga also does not seriously press for issuance of process against the grand father-in-law. Rule is made absolute to the extent that the Trial Court will now proceed not only against the husband but the in-laws and sister-in-laws of the petitioner. Needless to state that all observations made in all orders till date are prima facie and shall not influence the Court at the trial. It would be open for the petitioner to raise such contentions as are permissible in law. Petition disposed of.

(S.C.DHARMADHIKARI, J.)